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## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

GARRET SITTS, et al.,	
PLAINTIFFS,	Civil Action No. 2:16-cv-00287-cr
v.	
DAIRY FARMERS OF AMERICA, INC., and DAIRY MARKETING SERVICES, LLC,	
DEFENDANTS.	

### **EXHIBIT 18**

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

GARRET SITTS, et al.,	
Plaintiffs,	Civil Action No. 2:16-cv-00287-cr
v.	
DAIRY FARMERS OF AMERICA, INC. and DAIRY MARKETING SERVICES, LLC,	
Defendants.	

# DEFENDANTS DAIRY FARMERS OF AMERICA, INC. AND DAIRY MARKETING SERVICES, LLC'S PROPOSED VERDICT FORM FOR THE PLAINTIFFS IDENTIFIED AS "DONALD T. & DONALD M. SMITH"<sup>1</sup>

Plaintiffs seek a finding of liability and damages relating to the Defendants Dairy Farmers of America, Inc. ("DFA") and Dairy Marketing Services, LLC ("DMS") (collectively, "DFA"). Because of the structure of the two entities, DFA and DMS are considered a single entity for purposes of deciding plaintiffs' claims. As a result, your answers to the questions below pertain to DFA and DMS, collectively.

See Plaintiffs' List Of Twenty Plaintiffs For Trial To Begin On July 1, 2020, May 21, 2020, ECF No. 207 ("Plaintiffs' List Of Twenty Plaintiffs For Trial"). DFA does not concede that any plaintiff has been properly identified on ECF No. 207 and reserves its right to seek relief as to any improperly identified plaintiff.

### Conspiracy To Restrain Trade Pursuant To 15 U.S.C. § 1

1.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by a		
	preponderance of the evidence that a single, "multifaceted" conspiracy between		
	DFA, at least 5 cooperatives (including St. Albans, Land O'Lakes and Agri-Mark)		
	and at least 16 processors (including Dean, HP Hood, Farmland and Kraft) existed		
	to lower raw milk premiums below what they otherwise would have been in order		
	to eliminate competition between buyers of Grade A raw milk?		
	Yes: No:		
2.	If you answered "Yes" to Question 1, do you find that plaintiffs "Donald T. &		
	Donald M. Smith" have proven by a preponderance of the evidence that DFA		
	knowingly participated in the above conspiracy to lower raw milk premiums below		
	what they otherwise would have been in order to eliminate competition between		
	buyers of Grade A raw milk?		
	Yes:No:		
	[If you answered "No" to either Question 1 or 2, please proceed directly to		
	Question 9. If you answered "Yes" to both Question 1 and Question 2, you must		
	proceed to Question 3.]		
3.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by a		
	preponderance of the evidence that "Grade A non-organic raw milk" is a proper		
	relevant product market in which to assess their conspiracy claim?		
	Yes: No:		
	[If you answered "No" to this Question 3, please proceed directly to Question 9.		
	If you answered "Yes" to this Question 3, you must proceed to Question 4.]		
4.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by a		

preponderance of the evidence that the Northeastern area defined by the plants

Yes:	No:		
[If you answered "N	o" to this Question 4, please proceed directly to Question		
If you answered "Yes	" to this Question 4, you must proceed to Question 5.]		
Do you find that pla	intiffs "Donald T. & Donald M. Smith" have proven		
preponderance of the	e evidence that any conspiracy between DFA and at le		
cooperatives and at	least 16 processors had a substantial adverse effect		
competition, in that	t lowered raw milk premiums below what they would		
been absent the conspiracy, decreased output of raw milk, lowered the qu			
raw milk, or reduced	d competition among purchasers of raw milk in a rele		
geographic and produ	act market between October 8, 2005 and 2017?		
Yes:	No:		
[If you answered "No	o" to this Question 5, please proceed directly to Questi		
If you answered "Yes	" to Question 5, you must proceed to Question 6.]		
Do you find that DFA	A proved by a preponderance of the evidence that any all		
agreement between i	t and the processors and cooperatives in the case bene-		
competition, in the fo	rm of increasing overall milk prices for farmers, reducin		
costs to assemble, har	al or balance raw milk, maximizing the overall amount o		
milk produced by da	iry farmers that is placed in processing plants or minim		
the risk that the milk	will be "dumped" during times of oversupply, or in other		
proven by DFA?			
Vasi	No:		

7.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by a preponderance of the evidence that the competitive benefits of DFA's alleged conduct were substantially outweighed by the competitive harm?		
	Yes: No:		
	[If you answered "No" to Question 7, please proceed directly to Question 9. If you answered "Yes" to Question 7, you must proceed to Question 8.]		
8.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by a preponderance of the evidence that, between October 8, 2005 and 2017, they were injured by a conspiracy between DFA and at least 5 cooperatives and at least 16 processors, in that the conspiracy caused them specifically to receive lower milk premiums than they would have received during that time period absent a conspiracy?		
	Yes: No:		
Monopsoniz	zation Pursuant To 15 U.S.C. § 2		
9.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by a preponderance of the evidence that "Grade A non-organic raw milk" is a proper relevant product market in which to assess their monopsony claim?		
	Yes: No:		
10.			
	Yes: No:		
	[If you answered "No" to either Question 9 or 10, but "Yes" to Question 8, please proceed directly to Question 23. If you answered "No" to Question 9 (or did not reach that Question), and answered "No" to Question 10 and Question 11, please		

sign and return the verdict form at this point. If you answered "Yes" to both

	Question 9 and Question 10, you must proceed to Question 11.]		
11.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by a preponderance of the evidence that DFA has monopsony power in a relevant product and geographic market?		
	Yes: No:		
	[If you answered "No" to Question 11, please proceed directly to Question 14. If you answered "Yes" to Question 11, you must proceed to Question 12.]		
12.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by a preponderance of the evidence that DFA willfully acquired or maintained monopsony power through predatory acts or practices, rather than through lawfully permitted conduct, that had the effect of harming competition for the purchase of raw milk in Order 1 from October 8, 2005 to 2017?		
	Yes: No:		
	[If you answered "No" to Question 12, please proceed directly to Question 14. If you answered "Yes" to Question 12, you must proceed to Question 13.]		
13.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by a preponderance of the evidence that, between October 8, 2005 and 2017, they were injured by predatory conduct by DFA that caused them specifically to receive lower milk premiums than they would have received during that time period absent DFA's predatory conduct?		
	Yes: No:		

### Attempted Monopsony Pursuant To 15 U.S.C. § 2

	No:		
su	ou answered "No" to Question 14, please proceed directly to Question 18, ect to the instructions above. If you answered "Yes" to Question 14, you must eed to Question 15.]		
5. Do you find that plaintiffs "Donald T. & Donald M. Smith" have preponderance of the evidence that DFA possessed a specific intent to not a relevant product and geographic market, such that it acted with the conformal of acquiring the buying power to control prices and to reduce the appurchases and to exclude or destroy competing buyers of raw milk in the conformal of the con			
Y	No:		
	ou answered "No" to Question 15, please proceed directly to Question 18. If answered "Yes" to Question 15, you must proceed to Question 16.]		
in De	If you find that DFA had the specific intent to achieve a monopsony and engaged in significant predatory conduct, do you also find that plaintiffs "Donald T. & Donald M. Smith" have proven by a preponderance of the evidence that there was a dangerous probability that DFA would succeed in achieving monopsony power in a relevant product and geographic market if it continued to engage in the same or similar conduct?		
in			

17.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven by preponderance of the evidence that, between October 8, 2005 and 2017, they will injured by predatory conduct by DFA that caused them specifically to receive low milk premiums than they would have received during that time period ab DFA's predatory conduct?			
	Yes:	No:		
<b>Conspiracy</b>	To Monopsonize Pursuant	Co 15 U.S.C. § 2		
18.	Do you find that plaintiffs "Donald T. & Donald M. Smith" have proven preponderance of the evidence that a single, "multifaceted" conspiracy bet DFA, at least 5 cooperatives (including St. Albans, Land O'Lakes and Agri-N and at least 16 processors (including Dean, HP Hood, Farmland and Kraft) exfor DFA to obtain or maintain monopsony power in the raw milk market in 1?			
	Yes:	No:		
19.		"Donald T. & Donald M. Smith" have proven by a ace that DFA knowingly entered into and/or participated		
	Yes:	No:		
	[If you answered "No" to either Question 18 or 19, but "Yes" or 17, please proceed directly to Question 23, subject to the instryou answered "Yes" to both Question 18 and Question 19, you Question 20.]			
20.	preponderance of the evid	"Donald T. & Donald M. Smith" have proven by a dence that DFA specifically intended to acquire or or in the proper market, such that it entered into the cious aim of using predatory conduct to acquire or		

Yes:	No:	
[If you answered	"No" to Question 20, please proceed directly to Question 23	
subject to the inst proceed to Quest	uctions above. If you answered "Yes" to Question 20, you mus on 21.]	
Do you find that	plaintiffs "Donald T. & Donald M. Smith" have proven by	
preponderance of	he evidence that DFA committed an overt act in furtherance o	
the conspiracy between October 8, 2005 and 2017?		
Yes:	No:	
[If you answered	"No" to Question 21, please proceed directly to Question 23	
subject to the inst proceed to Quest	uctions above. If you answered "Yes" to Question 21, you mus on 22.]	
Do you find that	plaintiffs "Donald T. & Donald M. Smith" have proven by a	
preponderance of	he evidence that, between October 8, 2005 and 2017, they were	
injured by a conspiracy to monopsonize that caused them specifically to receiv		
lower milk premiums than they would have received during that time period absen		
the conspiracy?		
Yes:	No:	
[If you answered	Yes" to any of the following Questions: 8, 13, 17 or 22, you may	
proceed to Ques	on 23. If you have either not reached those Questions, or	
	on 23. If you have either not reached those Questions, or all of the following Questions: 8, 13, 17, and 22, please sign and	

### **Damages**

23. If you have found that plaintiffs "Donald T. & Donald M. Smit			ve proved their
	claim for an unlawful c	onspiracy, unlawful monopsony, attempted	monopsony or
	conspiracy to monopso	onize, do you find that they have provided	l a reasonable,
	reliable and non-specu	lative basis for determining damages susta	ained by these
	violations?		
	Yes:	No:	
		to Question 23, you may proceed to Queston 23, please sign and return the verdict form	
24.	Do you find that plain	tiffs "Donald T. & Donald M. Smith" hav	e carried their
	burden to apportion dan	nages between lawful and unlawful causes?	
	Yes:	No:	
		to Question 24, you may proceed to Queston 24, please sign and return the verdict form	
25.	State the amount of dam	nages proved by plaintiffs "Donald T. & Don	ald M. Smith":